

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SAMUEL MENDEZ,	:	<i>Electronically Filed</i>
	:	
Plaintiff,	:	
	:	
vs.	:	CA No. 05-35 ERIE
	:	
PENNSYLVANIA DEPARTMENT OF	:	
CORRECTIONS, ET AL.	:	
	:	
Defendants.	:	
	:	
	:	

**REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT
FILED ON BEHALF OF DEFENDANTS PRISON HEALTH SERVICES, INC.
AND DR. MARK BAKER**

AND NOW COME Defendants, Mark Baker, D.O. and Prison Health Services, Inc. ("PHS"), by and through their attorneys, Elizabeth M. Yanelli, Esquire and Pietragallo, Bosick & Gordon, and file this Reply Brief in Support of their Motion to Dismiss Plaintiff's Complaint as follows:

Plaintiff's Argument that Defendants' Are Required to Submit a Verification to Their Motion to Dismiss is Contrary to Law, as Motions Need Only be Signed by Attorney of Record Pursuant to Rule 11 of the Federal Rules of Civil Procedure.

Plaintiff has filed a response to the Motion to Dismiss filed on behalf of PHS and Dr. Mark Baker in which Plaintiff argues that the Motion to Dismiss should be denied and stricken because it does not contain a verification. Specifically, Plaintiff contends 28 U.S. C. Section 1746 requires that a verification "be attached to any and all pleadings such as a Motion to Dismiss and that such verification be signed by the defendant or party so involved." (Plaintiff's Response, ¶ 1). Plaintiff's position is clearly contrary to the Federal Rules of Civil Procedure.

Section 1746 of Title 28 provides that unsworn declarations may be made under penalty of perjury whenever such declarations are required under law, rule, regulation, order, or requirement made pursuant to law. The Federal Rules of Civil Procedure do not require a verification to be submitted in support of a Rule 12(b)(6) Motion to Dismiss. To the contrary, Rule 11 of the Federal Rules of Civil Procedure provides that every “pleading, written motion, or other paper shall be signed by at least one attorney of record in the attorney’s individual name or, if the party is not represented by an attorney, shall be signed by the party.”

The Federal Rules of Civil Procedure do not require that defendants submit a verification to their Motion to Dismiss, and Section 1746 of Title 28 does not apply to the Motion to Dismiss submitted on behalf of these defendants.

Conclusion

For all of the above-stated reasons, as well as those reasons set forth in their Brief in Support of their Motion to Dismiss, Defendants, Prison Health Services, Inc. and Mark Baker, D.O. respectfully request that Plaintiff’s Complaint be dismissed.

Respectfully submitted,

PIETRAGALLO, BOSICK & GORDON

/s/ Elizabeth M. Yanelli

ELIZABETH M. YANELLI

Pa. I.D. #86932

One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

(412) 263-2000

*Attorney for Defendants,
Mark Baker, D.O. and
Prison Health Services, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Reply Brief in Support of Motion to Dismiss Plaintiff's Complaint Filed on Behalf of Prison Health Services, Inc. and Dr. Mark Baker** was served via United States First-Class Mail, postage prepaid, this 23rd day of November, 2005, upon the following non-ECF users:

Samuel Mendez, CY-7322
801 Butler Pike
Mercer, PA 16137

Rodney M. Torbic, Esquire
Susan J. Forney, Esquire
Office of Attorney General
Manor Complex, 6th Floor
564 Forbes Avenue
Pittsburgh, PA 15219

/s/ Elizabeth M. Yanelli
ELIZABETH M. YANELLI
Pa. I.D. No. 86932

PIETRAGALLO, BOSICK & GORDON
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219
(412) 263-2000

*Attorney for Defendants,
Mark Baker, D.O. and
Prison Health Services, Inc.*